

01-04-08

Section 5

Public Records

5.1 Public Information That Must Be Disclosed

5.1.1 Law Enforcement Information

* * *

5.1.2 Other Public Information

5.1.2.010 Advice from the City Attorney's Office

Upon request, the City Attorney will release any written interpretation of Article I, Section 3(b) of the California Constitution, the Public Records Act, the Brown Act, the Political Reform Act and any City of San Jose Sunshine or Ethics ordinance, code or rule. This provision does not require the disclosure of the actual advice given to any client.

5.1.2.020 Drafts and Memoranda

Once a document is in final form, preliminary drafts, notes or memoranda, whether in printed or electronic form, will be subject to disclosure if they have been retained as of the time the request is made. This subsection does not require the retention of preliminary drafts, notes or memoranda that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice.

5.1.2.030 Litigation Material

Notwithstanding any exemptions or privileges otherwise provided by law, the following are public records subject to disclosure under this Sunshine Ordinance:

- A. A pre-litigation claim against the City;
- B. A record previously received or created by a department in the ordinary course of business that was not protected by the attorney-client privilege when it was received or created; and
- C. When a lawsuit is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party including the text and terms of any settlement.

5.1.2.040 Personnel Information

- A. None of the following will be exempt from disclosure under Government Code Section 6254(c), or any other provision of California law where disclosure is not forbidden:
1. The job pool characteristics and employment and education histories of all successful job applicants, including, at a minimum, the following information as to each successful job applicant:
 - (a) Years of graduate and undergraduate study, degree(s) and major or discipline;
 - (b) Years of employment in the private and/or public sector;
 - (c) Whether currently employed in the same position for another public agency;
 - (d) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
 2. The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, personal email address, social security number, age and marital status of the employee must be redacted.
 3. The job description of every employment classification.
 4. The total compensation paid to an employee, including salary and City-paid benefits.
 5. Any memorandum of understanding between the City or department and a recognized employee organization.
 6. The amount, basis and recipient of any performance-based increase in compensation, benefits or both, or any bonus, awarded to any employee.

5.1.2.050 Contracts with the City

A. City Solicitation for Contracts

1. All correspondence regarding a City Solicitation for contracts with the City, including responses to Requests for Proposals, become the exclusive property of the City and are public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that are sent to the City are subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.
2. Therefore, any proposal which contains language purporting to render all or significant portions of the proposal “Confidential”, “Trade Secret” or “Proprietary”, or fails to provide the exemption information required as described below will be considered a public record in its entirety subject to the procedures in Subsection 4.
3. The City will not disclose any part of any proposal before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended award, all proposals received in response to a solicitation will be subject to public disclosure. If a proposer believes that there are portion(s) of the proposal which are exempt from disclosure under the Public Records Act, the proposer must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a proposer submits trade secret information, the proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption.
4. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the City will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.
5. After the notice of an intent to award a City contract has been announced, the names of the evaluators and collective summaries of the evaluations or ratings must be made available if requested.

- B. When the City has negotiated the following types of agreements without a competitive process: (1) personal, professional or other contractual services or (2) leases or permits having total anticipated revenue or expense to the City of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or (3) any franchise agreements, then after the negotiations have been concluded all documents exchanged and related to the position of the parties, including draft contracts, must be made available for public inspection and copying upon request. This subsection does not require the retention of draft contracts that would not otherwise be retained in the ordinary course of business or pursuant to a policy, procedure or practice. Upon completion of negotiations, the executed contract, including the dollar amount of the contract, must be made available for inspection and copying.
- C. San Jose Municipal Code Section 4.04.080 provides:
1. The City Manager must file a quarterly report with the City Council which describes all contracts having a value of One Hundred Thousand Dollars or more that were entered into and executed by the City Manager, City Attorney, City Clerk, and City Auditor, in the preceding calendar quarter. The report must identify the subject matter of the contract, the person(s) or entity(ies) with whom the contract was made and the amounts, if any, payable by or to the City under each contract.
 2. The City Attorney, City Clerk, and City Auditor must provide to the City Manager the information necessary to enable the preparation and filing of quarterly reports.
- D. All other contracts over \$100,000 are reported to the City Council when they are requested to be approved.
- E. All contracts regardless of amount or who approved it are filed and open to public inspection at the City Clerk's Office.

5.1.2.060 Budget and Other Financial Information

To be decided by the Subcommittee

5.1.2.070 Balancing Test

To be decided by the Task Force